

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Cause No. 1:14-cr-0245-TWP-TAB
)
KENNETH TURNIPSEED,) - 01
)
Defendant.)

REPORT AND RECOMMENDATION

On October 17, 2017, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on February 7, 2017 and a supplement petition filed on February 15, 2017. Defendant Turnipseed appeared in person with his appointed counsel Michael Donahoe. The government appeared by Jeff Preston, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Shelly McKee.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Turnipseed of his rights and provided him with a copy of the petition. Defendant Turnipseed orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Turnipseed admitted violations 1, 2, 3, 4, and 5. [Docket Nos. 54 and 58.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from any unlawful use of a controlled substance.”</p> <p>As previously reported to the Court, on November 16, 18, 20, December 16, 2016, and January 9, 2017, Mr. Turnipseed provided urine specimens which tested positive for amphetamine. He admitted using methamphetamine on or about those dates.</p>
2	<p>“The defendant shall participate in a substance abuse treatment program at the direction of the probation officer, which may include no more than eight drug tests per month. The defendant shall abstain from the use of all intoxicants, including alcohol, while participating in a substance abuse treatment program. The defendant is responsible for paying a portion of the fees of substance abuse testing and/or treatment in accordance with his ability to pay.”</p> <p>On January 2, 7, 9, 11, 16, 18, 21, 23, 25, 28, 30, February 1, and 4, 2017, Mr. Turnipseed failed to attend scheduled intensive outpatient counseling sessions at Indianapolis Counseling Center. On January 11, 2017, Mr. Turnipseed failed to attend his scheduled individual substance abuse treatment session at Volunteers of America and failed to contact the counselor in order to re-schedule his appointment. On January 4, 5, 7, 8, 24, 27, 28, 29, 30, and 31, 2017, Mr. Turnipseed failed to report for scheduled drug screens.</p>
3	<p>As previously reported to the Court, on December 5, 10, 12, 19, 21, and 26, 2016, the offender failed to attend scheduled counseling sessions. On October 24, 2016, a payment plan was established instructing the offender to remit monthly payments in the amount of \$50 on November 15, December 15, 2016, and January 15, 2017, to be applied toward the \$150 substance abuse treatment co-pay fee. One payment in the amount of \$30 was remitted and the balance due is \$120.</p> <p>“If this judgment imposes a fine or restitution, it is a condition of probation/supervised release that the defendant pay in accordance with the Schedule of Payments sheet of the Judgment and Commitment Order.”</p> <p>As previously reported to On October 24, 2016, a payment plan was established instructing the offender to remit monthly payments in the amount of \$75 beginning December 1, 2016. To date, no payments have been remitted. The special assessment balance remains \$75 (\$125 was</p>

paid while the offender was an inmate in the Bureau of Prisons) and the fine balance remains \$1,500.

4 **“You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.”**

The offender has failed to obtain or provide documentation any type of legitimate employment despite requests from this officer.

5 **“The defendant shall not commit another federal, state, or local crime.”**

On February 7, 2017, the defendant was arrested by the Indianapolis Metropolitan Police Department (IMPD) for the offense of count one, possession of a narcotic drug; count two, possession of marijuana; count three, visiting a common nuisance; and count four, possession of paraphernalia. The case is pending in Marion County Superior Court under Cause Number 49G20-1702-F5-005451.

According to the incident summary, on February 7, 2017, law enforcement officers were dispatched to investigate a report of someone trying to break into cars. While in the area officers heard a noise from inside a mobile trailer with an open door. They asked the individuals to exit the mobile trailer, at which time Mr. Turnipseed and two other adults presented themselves. Upon entering the trailer, officers observed in plain view, a bag of individually packaged balloons, which based on the officer's experience indicated common evidence of dealing in narcotics. Also observed was a small tin case containing marijuana and a large bag on a table inside the trailer that contained heroin. A small bag on the counter top which contained a pipe, commonly used for smoking marijuana, was also discovered. Each suspect was read their Miranda Rights, arrested, and transported to the processing center. During a search incident to arrest, it was discovered the offender had a scale inside one of his coat pockets.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is II.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 6 to 12 months' imprisonment.

5. Parties jointly recommended a sentence of twelve (12) months and one (1) day

with no supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of twelve (12) months and one (1) day with no supervised release to follow. The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: October 18, 2017 /s/ Magistrate Judge David E. Jones, sitting by designation

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